

STATINTL

25 January 1949

Office of the General Counsel

Personal Liability of Governmental Employees Arising from Automobile Accidents.

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1. In a recent conversation with [redacted] of this office, you raised the question of personal liability of Government employees arising from automobile accidents, when the employee was either driver or dispatcher. Your draft of a memorandum instruction to Communication employees which you forwarded for approval also requires a statement to complete paragraph 3. The following comments are furnished for your information.

2. In order to determine the individual's personal liability, the Government's liability must first be considered. Under the Federal Tort Claims Act of 1946, the Government waived its usual sovereign immunity and consented to suit by private individuals for various types of civil wrongs. Injury received by a private individual from the operation of a Government automobile would fall within the field in which claims could be asserted against the United States. This applies, however, only to injuries received in the United States and (apparently) its possessions, since claims arising in a foreign country are specifically excluded. The Tort Claims Act has since been abolished in title but the basic provisions remain in force. A summary of these provisions follows.

3. In the case of a Government employee regularly driving a Government vehicle within the scope of his employment, a private individual who suffers personal injury or property loss because of such employee's negligence has two courses of action open to him. He may either (1) file his claim (provided it amounts to less than \$1,000.) with the administrative agency of the Government on its merits, or (2) file suit against the Government in a Federal District Court for unlimited damages. Normally, suit is brought against the Government alone or against the Government and the employee as co-defendants. Judgment in either case is a complete bar to any subsequent action against the employee alone. If judgment is returned against the employee and the Government jointly, it is assumed that the Government alone would pay in full, in view of the established policy of the Government not to penalize an employee for his negligence other than through disciplinary or whatever personnel action the individual agency may take on its own initiative. There is no clear prohibition in the statute preventing suit against the individual alone. In that case, however, the Government almost certainly could be joined as the principal party in interest. The same conclusions would most likely be reached when the negligent employee is a dispatcher rather than a driver. The negligence causing the injury is simply one step removed. The primary question is whether the dispatcher is acting within the course of his employment when he is negligent. If he is performing his regular duties and is within the scope of his authority, then his employer, the Government, is equally liable and, as a matter of policy, the Government would usually pay the whole adverse judgment. When the employee's action is completely outside

the course of his employment, then it would not appear that the Government could be joined and the dispatcher would bear the full liability. In every case, it is a question of fact which must be determined by the circumstances of the particular situation.

4. In passing, it should be noted that claim or suit against the U. S. must be brought within one year after the right accrues. A claim (not exceeding \$1,000.) may be withdrawn by the claimant upon 15 days notice and suit then instituted in court. In this case, however, the claimant's suit is limited to the monetary value of the claim filed with the administrative agency. If final action has been taken by the agency, suit may still be brought in court, but there is no limit on the amount sought. I do not believe that the other provisions of the statute, which are of a technical legal nature, would be of interest to you.

5. Since the pertinent provisions of the code are spread over various sections and there is no pertinent extract which is sufficiently comprehensive for inclusion in paragraph 3 of your memorandum, it is suggested that paragraph 3 of this memorandum may serve your purpose.

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